

PATENT

Attorney Docket No. A-70895/RBC/VEJ
Attorney Matter No. 463678-00192
Application No. 09/977,151#10
B. Webb
7/22/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Brian M. Adams

Application No. 09/977,151

Filed: October 12, 2001

For: CLOSURE INCLUDING CAP AND
FITMENT HAVING GRIPPING
MEMBER

Art Unit: 3737

Examiner: Robin A. Hylton

Docket No.: A-70895/RBC/VEJ

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Patricia A. Diehl

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P.O. Box 1450
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RESPONSE TO ELECTION OF SPECIES

Sir:

This communication is responsive to the election of species requirement of June 20, 2003. The Examiner requires Applicants to elect one of the following groups of species identified by the Examiner:

Species I directed to FIGS. 1-11;

Species II directed to FIGS. 12 and 13;

Species III directed to FIGS. 14-16;

Species IV directed to FIGS. 17 and 18;

Species VI [sic] directed to FIGS. 19 and 20;

Species VII directed to FIGS. 21 and 22; and

Species VIII directed to FIGS. 23-30.

RESPONSE TO ELECTION OF SPECIES

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Applicant hereby elects Species I, with traverse. Claims 1-5 are readable on the elected species.

Applicant respectfully traverses the Examiner's restriction requirement. Pursuant to the *Manual of Patent Examining Procedure*, "[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." See *M.P.E.P.*, § 803.01, p. 800-4 (8th ed. 1st rev. Feb. 2003).

In the present application, Applicant respectfully submits that the search of all inventions is not burdensome. The Examiner has not only searched and examined the entire, originally filed application, the Examiner has indicated all claims which are currently pending as either allowed or to include allowable subject matter. See *Office Action* dated March 18, 2003. In particular:

1. Claims 1-5, as originally filed, were allowed by the Examiner, see *Office Action*, paragraph 15;
2. Claims 6-10 have been cancelled;
3. Claims 11 and 12, as originally filed, were indicated as allowable if rewritten in independent form, see *Office Action*, paragraph 16; and
4. Claims 13-23 have been allowed by the Examiner, see *Office Action*, paragraph 15.

Although claims 1, 13 and 15 have been amended in response to the *Office Action*, Applicant respectfully submits that such amendments do not impose any serious burden on the Examiner. In particular, claims 1, 13 and 15 have been amended to remove superfluous limitations, namely, the "spout flange" and the "inner wall" of the spout. The scope of the amended claims is essentially unchanged with regard to the allowable subject matter and the very essence of the invention, namely, the configuration of the disclosed and claimed gripping structure.

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Applicant respectfully requests the Examiner to reconsider and withdraw the election of species requirement. In the event that the Examiner does not withdraw the requirement and makes a final requirement, Applicant reserves the right to petition the election of species requirement under 37 C.F.R. § 1.144.

Prompt and favorable consideration of this Response is respectfully requested. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extension of time or additional claims, and/or credit any overpayment to Deposit Account No. 50-2319 (Order No. 463678-00192; Docket No. A-70895/RBC/VEJ).

Respectfully submitted,

Date: 7/18/03

By: Robert B. Chickering
Robert B. Chickering
Registration No. 24,285
Filed Under 37 C.F.R. § 1.34(a)

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Art Unit: 3737 TELEPHONE #: (703) 308-1208
FROM: Robert B. Chickering / Victor E. Johnson FAX #: (415) 398-3249
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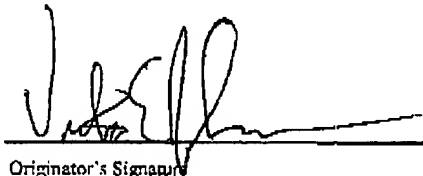
RE: U.S. Patent Application No. 09/977,151 for
Closure Including Cap and Fitment Having Gripping Member
Our Docket No. A-70895/RBC/VEJ (Our Matter No. 463678-00192)

COMMENTS:

Kindly acknowledge receipt of the following documents by return facsimile:

- 1) This facsimile cover sheet; and
- 2) RESPONSE TO ELECTION OF SPECIES.

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